

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Donna J. Jensen	ADMINISTRATIVE CONSENT ORDER NO. 2014-SW- 15 NO. 2014-AQ- 23
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TO: Donna Jensen
5031 240th St.
Ringsted, IA 50578

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (Department) and Donna J. Jensen (Ms. Jensen) for the purpose of resolving the air quality and solid waste violations which occurred during the burning of prohibited materials on Ms. Jensen's property in Ringsted, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this Order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Sheila Kenny, Environmental Specialist
Iowa Department of Natural Resources
1900 North Grand Ave
Spencer, Iowa 51301
Phone: 712/262-4177

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary

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to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this Order.

III. STATEMENT OF FACTS

1. Ms. Jensen owns and resides at a rural residence located in Sec. 23, T98N, R32W which is locally known as 5031 240th Street, Ringsted, Iowa.
2. On March 18, 2014, Sheila Kenny, an Environment Specialist with the Department, observed thick black smoke emanating from this property. For that reason, Ms. Kenny stopped to investigate. Once on site, she observed an active burn pile containing tires, aerosol cans, and waste oil filters. The resulting smoke exceeded 40% opacity. The property also had remains from previous burning activities including mattresses, appliances, several tires, plastic and metal containers, and other miscellaneous wastes. Ms. Kenny took photographs which documented the above observations.
3. On site, Ms. Kenny spoke with Ms. Jensen. Ms. Jensen stated that she was one of the property owners, but her son, Steve Jensen, operated a small shop on the property and was responsible for the fire. Steve Jensen was not on site at the time of the visit. Ms. Kenny instructed Ms. Jensen to immediately cease all burning of prohibited materials and asked Ms. Jensen to have her son contact her.
4. On June 27, 2014, the Department sent a Notice of Violation to Ms. Jensen documenting the above discussed open burning violations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 23.2 prohibits the open burning of combustible materials except as provided in the list of exemptions. The burning by Ms. Jensen of materials such as tires, mattresses, appliances, plastics, and waste oil filters is a violation of this rule. The visible emissions from this fire also exceeded 40% opacity, which is a violation of 567 IAC 23.3(2)(d). Therefore, the above stated facts show noncompliance with these provisions.
3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

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4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Ms. Jensen burned tires, aerosol cans, and waste oil filters on-site rather than taking the solid waste to a permitted landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Ms. Jensen agree to do the following:

1. Ms. Jensen shall immediately cease all illegal open burning of combustible materials. All remaining solid waste shall be removed from this site and disposed of at a permitted sanitary landfill. Copies of the landfill receipts shall be submitted to the Department within 30 days of the date the Director signs this Order; and
2. Ms. Jensen shall pay a penalty of \$3,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of this Order with a \$3,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Because the fire consumed most of the combustible materials, the total volume or tonnage of the waste materials is

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unknown. Ms. Jensen saved time and money on transportation and disposal fees. Therefore, \$500.00 is assessed for this factor.

Gravity of the Violation – The open burning of tires, mattresses, appliances, plastics, aerosol cans, and waste oil filters can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. It further threatens the integrity of our environmental programs and efforts to protect our valuable natural resources. Therefore, \$1,500.00 is assessed for this factor.

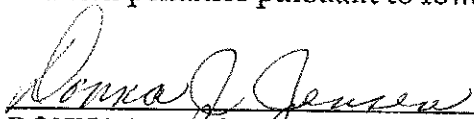
Culpability – Open burning and open dumping prohibitions, including those for waste tires, have been in place for many years. It is the responsibility of Ms. Jensen to remain knowledgeable of the Department's rules and to abide by them. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This Order is entered into knowingly and with the consent of Ms. Jensen. For that reason, Ms. Jensen waives her right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.


DONNA J. JENSEN

Dated this 12th day of
September, 2014.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 17th day of
September, 2014.

Carrie Schoenebaum; Sheila Kenny; DNR Field Office 3; EPA; VII.C.4